

SUBSTITUTE SENATE BILL NO. 71.

Executive Office.

State of Texas,

Austin, April 24, 1905.

To the Secretary of State:

I disapprove and herewith transmit Substitute Senate Bill No. 71, entitled "An Act to amend Article 3049 of Chapter 2, Title LVIII, Revised Civil Statutes of the State of Texas, relating to insurance and prescribing a penalty for failure to comply with the same and providing an emergency."

I give notice of and proclaim my objections to this bill as follows:

It provides among other things that "If any insurance company organized under the law of any other State or country, having obtained a certificate of authority from the Commissioner of Insurance to do business in this State, shall make an application for a change of venue or to move any suit or action to which it is a party heretofore or hereafter commenced in any Court of this State in the United States District or Circuit Court or to any Federal Court, the Commissioner of Insurance shall not at the expiration of the certificate of authority of such insurance company to do business in this State, renew and grant to such insurance company another certificate of authority to do business in this State for a period of three years—and such insurance company shall thereafter be prohibited from transacting business in this State until again duly authorized."

The original Act (Article 3049) which this bill proposes to amend, provides as follows: "But no subsequent certificate of authority shall be issued to any company organized under the laws of any other State or country when it shall be made to appear that such company has removed from any Court of this State to a court of the United States for trial any suit brought against it by a citizen of this State to recover for a loss under a policy of insurance issued by such company, and that by such removal, the suit has been transferred without and beyond the limits of the county within which such citizen resides."

The proposed amendment goes further than the original act, in that it seeks to prohibit the issuance of a subsequent certificate for a period of three years if the offending company shall make application for a change of venue or "to move" the cause into a Federal Court, while the original act as it now reads only prohibits a reissuance where there is a removal from a State Court to a Federal Court, sitting outside of the county in which the suit is

brought. I can not believe that it is a proper thing to deprive any litigant of a positive right or take from him any privilege enjoyed because he may make an application for a change of venue in a suit in Court. In 1887, an act (afterwards repealed in 1889) was passed in this State applicable to all foreign corporations, providing that "any foreign corporation sued or impleaded in any of the Courts of this State upon any contract made or executed in this State, or to be performed in this State, or for any act or omission, public or private, originating or happening in this State, which shall remove any such cause from such State Court into any of the Federal Courts held or sitting in this State, for the cause that such corporation is a non-resident of this State, or resident of another State than that of the adverse party, or of local prejudice against such corporation, shall thereupon forfeit and render null and void any permit granted to such corporation to transact business in this State." This act was held to be unconstitutional by our Supreme Court. (See Mortgage Co. vs. Worsham, 76 Texas 556).

There have been other decisions of the courts bearing upon similar subject matter and, while I am unprepared to say that they all sustain the doctrine announced in the case mentioned, I am of the opinion that the amendment here proposed would be rejected by the courts. It is not questioned that the State may impose reasonable terms upon foreign corporations and require them to obtain permits to transact their business within the State, but I do not believe that it could go to the extent of shutting the door in the face of an effort to obtain justice and closing its courts to preclude the assertion of such a right as to make an application for a change of venue, to say nothing of the propriety of maintaining good feeling and comity as between the States and the Federal Government.

Article 3049, above quoted, which this bill seeks to amend, has a provision affecting the right of a foreign insurance company doing business in this State to remove a cause into the Federal Court outside of the county in which the suit is pending and which, it seems to me, does not need the drastic proposition which this bill would impose.

For these reasons, I veto this bill.

S. W. T. LANHAM,
Governor.